Supreme Court, U. S.
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No.

IN THE

Supreme Court of the United States

October Term, 1980

DONALD S. MOORE, CAROLYN B. LORINCZ, WILLIAM E. VACTOR, SR., MICHAEL BROWN, JOHN HOOK, CHARLES CURTIS, ARNOLD GARDNER, and THE RECTOR, WARDENS AND VESTRYMEN OF ST. STEPHEN'S PARISH OF PLAINFIELD, NEW JERSEY,
Petitioners,

v.

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF NEW JERSEY, THE TRUSTEES OF CHURCH PROPERTY OF THE DIOCESE OF NEW JERSEY, AND THE RIGHT REVEREND ALBERT W. VAN DUZER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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QUESTION PRESENTED

A local congregation of a national church purchased its parish properties from its own funds and holds legal title to them without trusts or reverters in favor of the national church. The national church denominates itself as "hierarchical", but it is "democratic" rather than authoritarian in polity, and its laws do not confer ownership of parish properties upon it or impose trusts in its favor or other effective controls over such properties. May a civil court, consistently with the Religion Clauses of the First Amendment, award those properties to the national church based upon that church's complaint that the congregation has "abandoned the doctrine, discipline and worship" of the national church and has separated itself therefrom?

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	7
I. The Court Below Has Misinterpreted Decisions of This Court in Cases Involving Disputes Over Church Property	7
II. The Action of the Court Below Establishes the Religion of the Protestant Episcopal Church and Violates Free Exercise Rights of St. Stephen's Parish	10
III. Sound Public Policy, Reducing Religious Litigations, Will Be Served by Reversal	12
CONCLUSION	12
APPENDIX A—Opinion of the Supreme Court of New Jersey	A1
APPENDIX B—Dissent to the Opinion of the Supreme Court of New Jersey	A14
APPENDIX C—Opinion of the Superior Court of New Jersey, Appellate Division	A28
APPENDIX D—Title I, Canon 6, Section 4 of the Constitution and Canons of The Protestant Episcopal Church	A30
APPENDIX E—House of Bishops Message, September 13, 1979	A31

TABLE OF AUTHORITIES

Cases: Page

Jones v. Wolf, 443 U. S. 595 (1979) 5, 8, 9, 10, 12
Kedroff v. St. Nicholas Cathedral, 344 U. S. 94 (1952) 10
Md. and Va. Eldership of the Churches of God v. Church of God at Sharpsburg, 254 Md. 162, 254 A. 2d 162 (1969); *appeal dismissed,* 396 U. S. 367 (1970) 7, 8, 11, 12
Presbyterian Church v. Mary Elizabeth Blue Hull Presbyterian Church, 393 U. S. 440 (1970) 5, 10, 12
Presbytery of Riverside v. Community Church of Palm Springs, 89 Cal. App. 3d 910, *cert. denied,* 100 S. Ct. 469 (1979), 152 Cal. Rptr. 854 (1979) 9
Protestant Episcopal Church, et al. v. Graves, et al., 161 N. J. Super. 230, 391 A. 2d 563 (1978) 5
Serbian Orthodox Diocese v. Milivojevich, 426 U. S. 696 (1976) 8, 9
Watson v. Jones, 80 U. S. (13 Wall.) 679 (1871) ...5, 6, 7, 8, 9, 10

Statutes:

28 U. S. C. § 1257(3) 2

Constitutions:

U. S. Constitution, Amend. I 2, 11
U. S. Constitution, Amend. XIV, Sec. 1 2

Other Authorities:

Bouscaren and Ellis, Canon Law (1966) 9
De Ecclesia—The Constitution of the Church of Vatican Council II (Deus Books ed.) 9

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of New Jersey entered in this proceeding on July 24, 1980.

OPINIONS BELOW

The opinion of the Supreme Court of New Jersey, which appears as Appendix A hereto, is reported at 83 NJ 572 and 417 A. 2d 19 (1980). The dissenting opinion in that court appears as Appendix B. The opinion of the Superior Court of New Jersey, Appellate Division, is reported at 167 N. J. Super. 563, and 401 A. 2d 548 (1979). The opinion of the Superior Court of New Jersey, Chancery Division, is reported at 161 N. J. Super. 230 and 391 A. 2d 563 (1978).

JURISDICTION

This case was decided by, and judgment was entered by, the Supreme Court of New Jersey on July 24, 1980. The jurisdiction of this Court is invoked under Title 28 of the United States Code § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

U. S. Constitution, Amendment XIV, Sec. 1:

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE

This is an action brought by a national church against a former congregation thereof to dispossess the congregation of properties to which the congregation has title because the congregation will not conform to the doctrine,

discipline and worship of the national church and has separated itself from that church. (Complaint, paras. 7, 13, 16). The respondents (the original plaintiffs) are The Protestant Episcopal Church in the Diocese of New Jersey, the bishop of the Diocese and the diocesan trustees of church property. The Protestant Episcopal Church is "hierarchical" in the sense of having an ascending order of ecclesiastical ranks and employing a "hierarchical" style of titles of officials. But its constitution and canons impose no power of strict and comprehensive hierarchical control over matters of property,[1] and the church describes its polity as "democratic". (Affidavit of Rt. Rev. Albert W. Van Duzer, Sept. 21, 1977, para. 16). The petitioners (original defendants) are St. Stephen's Parish of Plainfield, New Jersey, and its rector, wardens and vestrymen.

In 1895, a group of individuals, as "the Congregation of St. Stephen's Church in Plainfield", describing itself as "a religious society worshiping according to the customs and usages of the Protestant Episcopal Church", became incorporated, under the then relevant New Jersey statute, as "The Rector, Wardens and Vestrymen of St. Stephen's Church in Plainfield." Over the years, the corporation purchased, solely out of its own corporate funds, and without recitation in the documents of purchase of any provisions of trust or reverter in favor of the Diocese or the Protestant Episcopal Church, a church building, a parish hall, and a church school building. Throughout the life of the parish, all funds necessary to its property

1. In 1979, three years after the commencement of this litigation, the Protestant Episcopal Church adopted a canon (Appendix D) which specifies that all parish property is held in trust for the national church and the diocese in which it is located. As the court below notes, "this express trust provision was not part of the written canons when St. Stephen's decided to sever its relationship with the Diocese and the national church." (Appendix A, A11).

acquisitions, operation and maintenance have been derived solely from the contributions of its members. (Affidavit of Donald S. Moore, Sept. 28, 1977, para. 9). The parishioners "bought, built and paid for" St. Stephen's. (Affidavit of Canon Ronald Charles Henstock, Jan. 20, 1978, para. 9; App. A, A3).

Until 1976, St. Stephen's Parish had considered itself affiliated with The Protestant Episcopal Church in the Diocese of New Jersey and The Protestant Episcopal Church in the United States of America. Over the intervening 82 years since the parish's founding, its rectors, wardens and vestrymen had been at pains to assure that the parish was faithful to the purposes stated in its charter, namely, "to conduct regular church services according to the long established practices of The Protestant Episcopal Church." (Moore affidavit, *supra,* para. 11).

In 1976, strong disagreement between the parish and general church relating to doctrine, discipline and worship resulted from certain actions taken by the General Convention of The Protestant Episcopal Church which the vestrymen of St. Stephen's regarded as contrary to the historic teachings and traditions of the Church and to which they could not, in conscience, subscribe. (Letter of Joanna A. Child, Sept. 30, 1976). At no time seeking to alienate its properties or divert them from their traditional uses (Moore affidavit, para. 10) on April 24, 1977, the parish nevertheless voted to sever its relationship with the Diocese. On September 30, 1977, the Bishop, the Diocese and the diocesan property tru tees brought this action in the Superior Court, Chancery Division, Union County, New Jersey.

The complaint and the affidavits accompanying it stressed that the aid of the civil courts was being sought for the religious end of assuring that the parish properties would be used solely in accordance with the "doctrine,

discipline and worship" of The Protestant Episcopal Church in the U. S. A. (Complaint, paras. 7, 10, 13, 16; Van Duzer affidavit, para. 7).[2]

On February 10, 1978, the Chancery Division granted summary judgment to the plaintiffs, ordering that control of all the parish properties be transferred to the plaintiffs and ousting the pastor from the rectory and the church. The Appellate Division affirmed, and the parish appealed to the Supreme Court of New Jersey. There, as below, the parish contended that the order of the trial court violated rights of the parish protected by the Free Exercise Clause of the First Amendment, violated the Establishment Clause thereof, deprived the parish of its properties without due process of law (Affidavit of parishioners, Jan. 8, 1978, para. 3; *Protestant Episcopal Church, et al. v. Graves, et al.*, 161 N. J. Super. 230, 391 A. 2d 563, 571 (1978) and was directly contrary to the decision of the Supreme Court of the United States in *Jones v. Wolf*, 443 U. S. 595 (1979) and other decisions of this Court relating to church property disputes and religious liberty.

The Supreme Court of New Jersey, by a vote of four to three, affirmed, holding, in short, that since The Protestant Episcopal Church is a "hierarchical body", the teaching of *Watson v. Jones*, 80 U. S. (13 Wall.) 679 (1871) requires that the "civil courts must accept the authoritative ruling of the higher authority within the hierarchy." (App. A, A6). The court stated that "[t]he

2. A further affidavit of the plaintiff Right Rev. Albert W. Van Duzer dated February 2, 1978, stated, at paragraph 9:

> "As Bishop and Ecclesiastical Authority for the Diocese of New Jersey, I have been left with no alternative but to carry forward the sacred and legal trust imposed on me to protect a parish and its assets from being diverted to goals other than those recognized by the doctrine, discipline and worship of the Protestant Episcopal Church of the United States of America."

basic dispute herein is unquestionably doctrinal in nature, the ecclesiastical determination of which incidentally affects the control over local church property." (App. A, A11). The court stated that it could have reached the same result by applying "neutral principles" of law. (*Id.* at A10).

Three justices dissented. It was their view (a) that the majority's construction of *Watson v. Jones* was incorrect in that *Watson* "did *not* involve the right of a local parish to secede from the central organization, taking its property with it." (App. B, A18. Emphasis by the Justices); (b) that the Establishment Clause would be violated by a holding that "the existence of a hierarchical church organization conclusively establishes that a local property dispute must be resolved in favor of the religious doctrine or tenet advocated by a central church." (*id.* at A17); (c) that no express or implied trust of the properties had been created (*id.* at A27); (d) that the case "is *not* doctrinal in nature" (*id.* at A19); (e) that it could and should have been decided under the neutral principles recommended in *Jones v. Wolf* (*id.* at A27).

REASONS FOR GRANTING THE WRIT

I. The Court Below Has Misinterpreted Decisions of This Court in Cases Involving Disputes Over Church Property.

As the dissenting opinion shows, the court below has misapplied *Watson v. Jones*, considering that decision to mean that if a church is, in some sense, "hierarchical", a trust in its favor is automatically implied of the properties of a disaffiliated parish.[3] That is so, in the view of the majority below, even though the general church is "democratically" organized (Van Duzer affidavit, Sept. 21, 1977, para. 16), even though the general church does not hold title to parish properties, even though the laws of the general church do not expressly impose trusts or reverters in its favor (Ven. Canon Smith affidavit, Jan. 23, 1978, para. 14) and even though the parish legally owns the properties, having bought them, paid for them, and taken and held legal title to them without any provisions of trust or reverter. Further:

1. Neither in *Watson v. Jones* or in any subsequent decision has this Court ever so held. *Watson* does not express a *per se* rule in favor of hierarchies. Instead it permits the award of local parish properties to an hierarchical central church solely where the facts disclose that the latter is legally so structured as to possess a *"power of control more or less complete* in some supreme judicatory." *Watson, supra,* at 722-723. (Emphasis supplied). And see separate opinion of Mr. Justice Brennan in *Md. and*

3. "Here it has been completely established that the Protestant Episcopal Church is a completely integrated hierarchical body, the ecclesiastical determination of which incidentally resolves the question of control over local church property. This is dispositive of the case." (App. A, A10).

Va. Eldership of the Churches of God v. Church of God at Sharpsburg, 396 U. S. 367, 369, n. 1 (1970). As the dissent below points out (App. B, A24-A27) and as the record herein thoroughly demonstrates, no such power of control was vested in the Protestant Episcopal Church.

2. As the dissenting opinion well establishes, the present case is simply and solely a *property* dispute (App. B, A20-A27) which must be settled by "neutral" principles of property law and may not be settled in the way proper to *doctrinal* disputes—*i.e.*, left (in the instance of a hierarchical church) to a determination by the central church. It is true that here the ecclesiastical plaintiffs have sought to utilize the power of the civil courts as a cudgel to enforce conformity upon a parish in "doctrine, discipline and worship", but they have done so by means of nothing other than a property action. But the majority below, misinterpreting this Court's decisions in *Watson, supra, Serbian Orthodox Diocese v. Milivojevich*, 426 U. S. 696, 709 (1976), and *Jones v. Wolf, supra*, resolved the case by applying the principles applicable solely to doctrinal disputes. This was error, resulting in an unlawful deprivation of the properties of the parishioners but also in palpable violation of the Free Exercise and Establishment Clauses. (See further discussion of the constitutional issues *infra*). As the dissent points out, in *Jones v. Wolf*, "both the majority and dissent, unlike the majority in this case, recognized that the hierarchical form of the church's organization did not *per se* resolve an intra-church dispute over control of church property." (App. B, A21). The decision below is to the contrary.

3. As seen under Paragraph 1 above, an implied trust of local parish property does not arise out of the mere fact that an organization labels itself "hierarchical", has a "hier-

archy" in ascending tiers of authority, and employs titles for its officials such as "Bishop", "Venerable Canon", etc. The seminal paragraph in *Watson*, whence has arisen discussion, in court cases, of "hierarchical" churches, in fact does not use the term "hierarchical" but refers solely to bodies wherein the congregation "is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate *power of control more or less complete* in some supreme judicatory over the whole membership of that general organization." *Watson, supra,* at 722-723. (Emphasis supplied). The Protestant Episcopal Church exerts no "power of control more or less complete" over parishes and their properties, preferring a "democratic" regime to one which, in such matters, could be regarded as authoritarian. The Roman Catholic, the Russian Orthodox and the Serbian Orthodox Churches illustrate the latter. See DE ECCLESIA—THE CONSTITUTION OF THE CHURCH OF VATICAN COUNCIL II, Deus Books ed., 98-127; BOUSCAREN AND ELLIS, CANON LAW, 1966; *Kedroff v. St. Nicholas Cathedral,* 344 U. S. 94, 105 (1952); *Serbian Orthodox Church v. Milivojevich, supra,* at 715-717. Nothing better illustrates the absence, during this litigation, of the requisite "power of control" factor in the structure of The Protestant Episcopal Church than its adopting, in September, 1979, two years after the start of this action (and in response to the intervening decision of this Court in *Jones v. Wolf*) [5] of section 4 of Title I, Canon 6, which, as the court below states, "*now* specifies that all parish property is held in trust for the national church and the diocese in which the parish is located." App. A, A11. (Emphasis supplied).

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4. See Adams & Hanlon, *Jones v. Wolf: Church Autonomy and the Religion Clauses of the First Amendment,* 128 U. of PA. L. REV. 1291 (1980). And see *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal. App. 3d 910, 152 Cal. Rptr. 854, 865 (1979), *cert. denied* 100 S. Ct. 469 (1979).

5. See Appendix E.

4. The misconception of *Watson* by the court below puts that decision into opposition to the concept of neutral principles in that it permits a decision awarding local church properties to a national church in circumstances where such award would be barred by the proper application of neutral principles. The holding below indeed puts *Watson v. Jones* and *Jones v. Wolf* into conflict, when in fact those decisions are completely compatible.

5. Here the facts disclose the existence of clear "neutral principles" factors in favor of St. Stephen's. The court below, by its treatment of those factors, misapplies the teachings of the Supreme Court in *Blue Hull*,[6] *Sharpsburg*, and *Jones v. Wolf* as to what proof is necessary in order to give effect to such principles.

II. The Action of the Court Below Establishes the Religion of the Protestant Episcopal Church and Violates Free Exercise Rights of St. Stephen's Parish.

This Court in *Watson*, when it discussed the relationship, within a connectional church, between a parish and a central church, directly tied the nonestablishment principle[7] to a contract between the two. Saying that it must be shown that the local church had given an "implied consent to this government" (that of the general church), the Court in its next sentence said why: "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." (*Watson*, at 728-729). The plain meaning is: the consent (agreement, understanding, "contract") must be shown to exist *or else* the establish-

6. *Presbyterian Church v. Mary Elizabeth Blue Hull Presbyterian Church*, 393 U. S. 440 (1970).

7. *Watson*, though not a First Amendment case, reflects the constitutional principles of nonestablishment. *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, 116 (1952).

ment of a sect will result. The action of the majority below violates the Establishment Clause because it appropriates the properties of the parish in order to assure their use according to the current "doctrine, discipline and worship" of the central church, and it does that in the face of evidence that the parties did not mutually intend that local parish properties were to be controlled by the central church.[8] As the dissenters rightly say:

> "The assumption that a local church has necessarily given up the power to control the property by affiliating with a hierarchical church is unsound. It assumes the existence of *a provision to that effect in the agreement that may in fact not exist.*" (App. B, A22. Emphasis supplied).

The dissenters properly observed that the canons and constitution of The Protestant Episcopal Church provided it only "a measure of control", insufficient to create an implied trust. (*Id.* at A24). The award of a parish's properties, in the absence of an agreement, to the general church on the ground that the parish declines to conform to the doctrine, discipline and worship of the latter and separates itself therefrom plainly denies the parish its rights of free exercise of religion.

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8. As the Maryland Court of Appeals, on remand in the closely parallel *Sharpsburg* litigation, said:

> "We do not understand that the decision in Hull requires the State equity courts to provide effective discipline and control of a denomination over its clergy or to maintain that denomination's 'purity of doctrine'. As we see it, this would be an 'establishment of religion' with a vengeance, and neither under the Maryland law nor under the prohibition of the First Amendment are we permitted to do this." *Md. & Va. Eldership v. The Church of God at Sharpsburg*, 254 Md. 162, 254 A. 2d 162, 170 (1969).

III. Sound Public Policy, Reducing Religious Litigations, Will Be Served by Reversal.

The granting of the Petition herein affords the Court the opportunity to advance not only church-state separation and religious liberty principles but also a sound public policy which militates against exhausting and divisive controversies in the courts among religious groups. This Court in *Presbyterian Church* (*supra* at 449), *Sharpsburg* (*supra* at 370), and *Jones v. Wolf* (*supra* at 602-603), has in effect, invited churches to put their legal houses in order through adopting clear internal laws which leave no doubt as to property ownership and the allocation of power where secessions arise. Churches which, for the protection of religious liberty and the assurance of peace, do this are still left with all the weaponry for the protection of their missions which are proper to churches: suasion, admonition, counseling, prayer, and, in the ultimate, litigation—but under clarified principles. The Protestant Episcopal Church itself admits to having seen merit in the Court's strong suggestions since it has now—but belatedly in terms of this litigation—amended its canons.

CONCLUSION

For all of the foregoing reasons a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of New Jersey.

Respectfully submitted,

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APPENDIX A

SUPREME COURT OF NEW JERSEY

A-96—September Term 1979

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF NEW JERSEY, THE TRUSTEES OF CHURCH PROPERTY OF THE DIOCESE OF NEW JERSEY, and THE RIGHT REVEREND ALBERT W. VAN DUZER,

Plaintiffs-Respondents,

v.

THE REVEREND STANWOOD E. GRAVES, GEORGE ROUSSEAU, ALPHEUS OAKES, JOANNA CHILD, GORDON GRISWOLD, HOWARD OAKLEY and WALTER K. SMITH,

Defendants,

and

DONALD S. MOORE, CAROLYN B. LORINCZ, WILLIAM E. VACTOR, SR., MICHAEL BROWN, JOHN HOOK, CHARLES CURTIS, ARNOLD GARDNER, and THE RECTOR, WARDENS AND VESTRYMEN OF SAINT STEPHEN'S PARISH OF PLAINFIELD, NEW JERSEY,

Defendants-Appellants.

Argued April 21, 1980—Decided July 24, 1980

On appeal from the Superior Court, Appellate Division, whose opinion is reported at 167 *N. J. Super.* 563 (1979).

Daniel J. Matyola and *William B. Ball*, a member of the Pennsylvania bar, argued the cause for appellants (*Wharton, Stewart & Davis*, attorneys; *Daniel J. Matyola* and *William B. Ball* and *Philip J. Murren*, members of the Pennsylvania bar, on the brief).
John Wood Goldsack argued the cause for respondents (*King, King and Goldsack*, attorneys).

The opinion of the Court was delivered by
SULLIVAN, *J.*

This case involves a dispute over control of local church property. The denomination involved is the Protestant Episcopal Church. Plaintiffs are the Protestant Episcopal Church (Church) in the Diocese of New Jersey (Diocese), the Trustees of Church Property of the Diocese and the Diocesan Bishop. Defendants are St. Stephen's Parish of Plainfield, New Jersey, and its rector, wardens and vestrymen.

The essential facts are not in dispute. St. Stephen's was incorporated on January 11, 1895 as an affiliate member of the Protestant Episcopal Church.[1] Its corporate title was and still is "The Rector, Wardens and Vestrymen of St. Stephen's Church in Plainfield." For a number of years after its incorporation St. Stephen's did not own any church property. However, in 1935 it purchased the

1. The parties and the trial judge assumed that the incorporation was had under the general statute governing the incorporation of religious societies and congregations, now *N. J. S. A.* 16:1-1 *et seq.* However, the language of the certificate of incorporation and the procedure used indicate that the incorporation was had under "An Act to incorporate religious societies, worshipping according to the customs and usages of the Protestant Episcopal Church," Laws of New Jersey, Act of February 17, 1829, as supplemented. See "An act to incorporate trustees of religious societies," §§ 27-38, approved April 9, 1875; and as supplemented by *L.* 1877, *c.* 56 and *L.* 1901, *c.* 62 (now *N. J. S. A.* 16:12-1 *et seq.*).

chapel which it had been using for services and the property on which the chapel was situated. In 1967 and in 1970 additional property was purchased for use as a parish hall and school building. In each case the purchase was made with local funds without Diocesan financial assistance. The deeds run to the parish corporation and do not contain any words of trust or reverter in favor of the Diocese.

Defendants concede that from 1895 until 1976, when the local parish became embroiled in a doctrinal dispute with the Diocese of New Jersey and The Protestant Episcopal Church, St. Stephen's operated as an affiliated member of the Diocese and the Church, adhering to long-established Protestant Episcopal customs and usages including submission to Diocesan authority. The parish used the standard prayer book of the Episcopal Church and in 1928 accepted the new Book of Common Prayer. Substantial changes in the canons of the Church were also followed. Annual Diocesan assessments and missionary quotas were regularly paid and delegates regularly sent to the Diocesan Convention. When the parish decided to sell its old rectory and place a mortgage on the new one in 1973 it sought and obtained Diocesan approval in compliance with the requirements of *N. J. S. A.* 16:12-4, part of a 1901 supplement to the 1829 statute regulating the affairs of the Protestant Episcopal Church in this State. In short, the undisputed facts demonstrate that from the time of its incorporation, St. Stephen's was an integral part of the hierarchical structure of the Church and submitted to the Church's authority in all matters connected with parish affairs.

The present controversy between the Diocese and St. Stephen's involves doctrinal disputes concerning, *inter alia,* the ordination of women, and changes in the 1928 Book of Common Prayer. In September 1976 the vestry-

men of St. Stephen's wrote to Bishop Van Duzer claiming the actions were "heretical" and stating that the parish had decided to suspend its affiliation with the Diocese and the Church, withhold payment of assessments and not participate in Diocesan affairs or accept Diocesan authority.

In April 1977, at a special meeting attended by about 29% of St. Stephen's adult parishioners, a majority of those present voted to sever the parish relationship with the Diocese. As a result, Bishop Van Duzer "inhibited" [2] Rev. Mr. Graves, the rector of St. Stephen's, from performing any priestly duties. Despite the ban, Rev. Mr. Graves continued to conduct services and a substitute priest sent by the Diocese to St. Stephen's was denied permission to officiate at parish services. The present suit followed seeking essentially to bar Rev. Graves from conducting services at St. Stephen's and to restrain defendants from putting parish property to any use not sanctioned by the Diocese.

After the commencement of suit, Rev. Mr. Graves responded to the certificate of inhibition by characterizing the facts alleged as grounds for inhibition as "false." Bishop Van Duzer, however, considered the response to be insufficient, and when Rev. Mr. Graves failed to submit a further response, he was "deposed" by formal action of Bishop Van Duzer. The relief sought was then expanded to include removal of Rev. Mr. Graves from the church rectory.

Cross-motions for summary judgment were submitted accompanied by numerous affidavits and documents. The

2. Under canon law of the Protestant Episcopal Church, an inhibited minister is given six months to retract, or to declare the falsity of the facts asserted in the certificate of inhibition. If such retraction or declaration is not made, it is the duty of the Bishop to depose the minister. See Title IV, Canon 10 of The Canons of the Episcopal Church.

trial judge granted plaintiffs' motion and entered a declaratory judgment that the parish property could not be used for any purpose not sanctioned by the Diocese. All assets of St. Stephen's were placed under the control of the Trustees of Church Property of the Diocese of New Jersey until the proper Church authorities decided otherwise. The judgment also ordered that Rev. Mr. Graves be removed from the church or parish house except to attend worship services or social events approved by the Diocese.[3] 161 *N. J. Super.* 230 (Ch. Div. 1978). On appeal, the Appellate Division upheld the judgment for the reasons expressed by the trial judge. 167 *N. J. Super.* 563 (1979). Defendants-appellants filed an appeal with this Court as of right alleging the existence of a substantial constitutional issue. See *R.* 2:2-1(a). We affirm for the following reasons.

In this country, courts have been repeatedly admonished not to attempt to decide ecclesiastical doctrinal controversies. It has been often stated that "[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson v. Jones,* 13 *Wall.* 679, 728, 20 L. Ed. 666, 676 (1872). However, subject to certain limitations, a civil court can be called upon to resolve a church property dispute.

The United States Supreme Court has held that the First Amendment does not dictate that a state must follow a particular method of resolving church property disputes and any one of various approaches may be adopted so long as it does not involve consideration of

3. Rev. Mr. Graves is no longer involved in this matter, having left St. Stephen's and the Protestant Episcopal Church and become a priest and pastor in another religious denomination in New York. His affidavit filed in the cause states that he no longer represents any interest in conflict with the interests which the plaintiffs seek to protect.

doctrinal matters. *Jones v. Wolf*, — *U. S.* —, 61 *L. Ed.* 2d 775 (1979). One acceptable method of approach was outlined in *Watson v. Jones, supra,* which repudiated the English rule that church property was the subject of an implied trust in favor of those who truly adhered to church doctrine. The Supreme Court held that our basic constitutional requirement of the separation of Church and State prevented courts from using the departure from doctrine approach in the adjudication of church property disputes. In the absence of specific trust provisions in the deed, will or other instrument by which the property is held, *Watson* made inquiry as to where the particular church body had placed ultimate authority over the use of church property. Two broad types of church government were recognized. In a congregational church, church authority and control over church property rested completely in the local congregation and its elected elders. In a hierarchical church, however, the local church is an integral and subordinate part of the general church and subject to its authority. *Watson,* therefore, held that in a hierarchical situation where there was a property dispute between a subordinate local parish and the general church, civil courts must accept the authoritative ruling of the higher authority within the hierarchy.

The *Watson* rule, although admittedly not exclusive, has been modified to the extent that a civil court may inquire into fraud, collusion or arbitrariness in the ecclesiastical disposition. *Gonzales v. Archbishop,* 280 *U. S.* 1, 74 *L. Ed.* 131 (1929).

The *Watson* principle was followed in *Serbian Orthodox Diocese v. Milivojevich,* 426 *U. S.* 696, 49 *L. Ed.* 2d 151 (1976). There, in a hierarchical church dispute over the removal of a bishop with its incidental effect on the adjudication of property rights, the United States Supreme Court reversed a state court ruling that had rejected the

decisions of the highest ecclesiastical tribunals of the hierarchical church upon the issues in dispute. In so doing, the Supreme Court ruled that the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government and to create tribunals for adjudicating disputes over these matters.

The Supreme Court held that when this choice has been exercised and ecclesiastical tribunals have been created to decide disputes over governmental direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them. 426 *U. S.* at 724-725. The Court also declared in *Serbian* that where the resolution of a church property dispute may be a consequence of an ecclesiastical determination, "[c]ivil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation, having been reached by the final church judicatory in which authority to make the decision resides." 426 *U. S.* at 720. Thus, *Watson's* holding with respect to the appropriate role of civil courts remains unchanged even where a church property dispute is incidentally resolved by an ecclesiastical determination.

Another acceptable method of resolving church property disputes is the neutral principles of law approach enunciated by the United States Supreme Court in *Presbyterian Church v. Hull Church,* 393 *U. S.* 440, 21 *L. Ed.* 2d 658 (1969). This approach, as evolved in succeeding cases, calls for the completely secular examination of deeds to the church property, state statutes and existing local and general church constitutions, by-laws, canons, Books of Discipline and the like to determine whether any basis for a trust in favor of the general church exists. In *Jones v. Wolf, supra,* the most recent decision in this area, the

Supreme Court reaffirmed its approval of the neutral principles of law doctrine as one of the various approaches for settling church property disputes. The *Jones* decision involved a church property dispute between the local church and the general church in which the Georgia courts had examined the property deeds, state statutes, local church charter, the general church constitution and Book of Church Order. When the examination failed to reveal any language of trust in favor of the general church, the Georgia courts ruled that more than a mere connectional relationship between the local and general church must be shown to give rise to property rights in the general church. Accordingly, it was held that legal title to the church property was vested in the local church congregation. The United States Supreme Court approved this neutral principles of law approach as an acceptable method of resolving the particular dispute.

Prior to the United States Supreme Court decision in *Watson,* the New Jersey cases had also recognized the distinction between congregationally structured churches and hierarchical churches. With respect to hierarchical church organization, it has been held that local church bodies were subject to the established discipline and authority of the central church body. *American Primative Society of Paterson v. Pilling,* 24 *N. J. L.* 653 (Sup. Ct. 1855); *Den v. Bolton,* 12 *N. J. L.* 206 (Sup. Ct. 1831).

After the *Watson* decision, a church property dispute was presented in *Kelly v. McIntire,* 123 *N. J. Eq.* 351 (Ch. 1938). In *Kelly,* the Presbyterian Church in the United States of America and one of its local member parishes became involved in a doctrinal dispute. The local parish had declared its severance from the parent church and repudiated the authority of the parent church. In a suit brought by members of the local church "loyal" to the parent church, the court held that "a congregation belong-

ing to a religious denomination and subject to the constitution, faith and doctrines thereof, cannot use its property for a purpose other than that sanctioned by the denomination." *Id.* at 361. The court rested its ruling on statutory provisions of this State relating to the acquisition, holding and use of local church property. *Rev.* 1877, *p.* 959, as amended by *P. L.* 1898, *p.* 397, 3 *Comp. Stat.*, *p.* 4309; *P. L.* 1881, *p.* 256, 3 *Comp. Stat.*, *p.* 4312 § 12d. Reference was also made to the statute regulating the incorporation of local Presbyterian parishes. *P. L.* 1905, *p.* 254, 3 *Comp. Stat.*, *p.* 4343 § 81. In addition, the court quoted extensively from *Watson* and appears to have also relied on that holding in determining the property dispute.

More recently, in *St. John's Greek Catholic Church v. Fedak*, 96 *N. J. Super.* 556 (App. Div. 1967), certif. den. 50 *N. J.* 406 (1967), a church property dispute involved a hierarchically structured national church (Metropolia) and a local parish which had never formally affiliated with the Metropolia but had participated on a voluntary basis. It was held that the evidence of relationship was insufficient to establish sufficient affiliation to make the local parish an integral part of the Metropolia. *St. John's*, however, stated that "[i]n the case of property belonging to a particular ecclesiastical organization which is part of a larger general church organization, a majority cannot secede from that organization and transfer the property of the church to another use." 96 *N. J. Super.* at 577.

Against this decisional background we consider the present matter. The Protestant Episcopal Church in the United States of America is a hierarchically structured organization which by virtue of its constitution and canons exercises pervasive control over its constituent parishes and missions. It is undisputed that St. Stephen's was a member church of the Protestant Episcopal Church and

remained affiliated with the national church and subject to hierarchical discipline and authority until the present dispute.

In the absence of express trust provisions, we conclude that the hierarchical (*Watson*) approach should be utilized in church property disputes in this State. Only where no hierarchical control is involved, should the neutral principles of law principle be called into play. Here it has been established that the Protestant Episcopal Church is a completely integrated hierarchical body, the ecclesiastical determination of which incidentally resolves the question of control over local church property. This is dispositive of the case.

St. Stephen's Church was incorporated as an affiliated member of the Protestant Episcopal Church. This incorporation has never been changed and the local church organization and its property are subject to the hierarchical authority of the parent church as indicated in the constitutions and canon law of the national church and its dioceses. Under the *Watson* rule, therefore, plaintiffs were entitled to the relief sought.

However, even using the neutral principles of law approach, we reach the same result. St. Stephen's, as heretofore noted, came into existence under the 1829 statute relating to incorporation of religious societies "worshipping according to the customs and usages of the Protestant Episcopal Church," as supplemented. The latest supplement, *L.* 1901, *c.* 62, now *N. J. S. A.* 16:12-1 *et seq.*,[4] specifically provides in section 4, that the sale, conveyance or mortgage of real estate belonging to an incorporated parish of the Protestant Episcopal Church is subject to the consent of the bishop of the diocese. St.

4. This statute is appended to the official copy of the Constitution and Canons of The Protestant Episcopal Diocese of New Jersey and is referred to as "governing the same."

Stephen's recognized the authority of this statutory provision since it is not disputed that when the parish decided to sell its old rectory and place a mortgage on the new one in 1973, it sought and obtained Diocesan approval. The constitution and canons of the national church in Title 1, Canon 6, Sec. 3 require the same consent. Under canon law of the Protestant Episcopal Church, the Rector, Wardens and Vestrymen of a local parish must be members of The Protestant Episcopal Church.

In addition, section 4 of Canon 6 of the national church, adopted after this litigation commenced, now specifies that all parish property is held in trust for the national church and the diocese in which the parish is located. It is true that this express trust provision was not a part of the written canons when St. Stephen's decided to sever its relationship with the Diocese and the national church. Nevertheless, it reflects established customs, practices and usages of The Protestant Episcopal Church.

The basic dispute herein is unquestionably, doctrinal in nature, the ecclesiastical determination of which incidentally affect the control over local church property. *Serbian, supra.* The critical fact is that title to the property remains in the Rector, Wardens and Vestrymen of St. Stephen's Church in Plainfield. St. Stephen's was and still is incorporated as an affiliated member of The Protestant Episcopal Church. The Rev. Mr. Graves has been ecclesiastically deposed as Rector of St. Stephen's. The other individual defendants have disaffiliated themselves from The Protestant Episcopal Church and thereby automatically terminated their eligibility to hold office as Wardens and Vestrymen of St. Stephen's. They lack standing to dispute the hierarchical assertion of control over St. Stephen's church property. In this connection

the (Venerable Canon) Russell Abbot Smith, an expert in the Canon Law of the Protestant Episcopal Church, in his affidavit filed in the cause, after summarizing the happenings at St. Stephen's Church, said:

> Under the circumstances prevailing at Saint Stephen's at the present time, it is impossible for the orderly management of parish affairs to be conducted. Those persons who claim to be Wardens or Vestrypersons openly and avowedly have disclaimed their allegiance to the Episcopal Church and now embrace the faith of a new Church. Under all canonical practices and traditions, these people are not entitled to vote nor to hold office in an Episcopal parish.

The individual defendants are free to disassociate themselves from St. Stephen's and The Protestant Episcopal Church and to affiliate themselves with another religious denomination. No court can interfere with or control such an exercise of conscience. The problem lies in defendants' efforts to take the church property with them. This they may not do. In this regard *Watson* stated the following:

> [T]he appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action and refuse to abide by its judgments. They have first erected themselves into a new organization, and have since joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. Under any of the decisions which we have examined, *the appellants, in their present position, have no right to the*

> *property, or to the use of it, which is the subject of this suit.* (emphasis added).
>
> [20 *L. Ed.* at 678]

For the reasons stated, we conclude that the ruling in favor of plaintiffs was correct in all respects and is hereby affirmed.

Chief Justice Wilentz and Justices Clifford, and Pollock join in this opinion.

Justice Schreiber has filed a separate dissenting opinion in which Justices Pashman and Handler join.

APPENDIX B

SUPREME COURT OF NEW JERSEY

A-96 September Term 1979

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF NEW JERSEY, THE TRUSTEES OF CHURCH PROPERTY OF THE DIOCESE OF NEW JERSEY, and THE RIGHT REVEREND ALBERT W. VAN DUZER,

Plaintiffs-Respondents,

v.

THE REVEREND STANWOOD E. GRAVES, GEORGE ROUSSEAU, ALPHEUS OAKES, JOANNA CHILD, GORDON GRISWOLD, HOWARD OAKLEY and WALTER K. SMITH,

Defendants,

and

DONALD S. MOORE, CAROLYN B. LORINCZ, WILLIAM E. VACTOR, SR., MICHAEL BROWN, JOHN HOOK, CHARLES CURTIS, ARNOLD GARDNER, and THE RECTOR, WARDENS AND VESTRYMEN OF SAINT STEPHEN'S PARISH OF PLAINFIELD, NEW JERSEY,

Defendants-Appellants.

SCHREIBER, *J.*, dissenting.

At the heart of this case is a dispute between a central church and members of a parish over the ownership and control of parish property. The legal question is what is the proper methodology to be applied to resolve that dispute. We are not being called upon to solve a controversy between rival factions of the same congregation or a re-

ligious dispute between members of a parish and a central church.

The First Amendment to the federal Constitution prohibits Congress from making any "law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." This Amendment has been incorporated into the Fourteenth Amendment, so that the states may not establish a religion or prohibit its free exercise. See *Cantwell v. Connecticut,* 310 *U. S.* 296, 303, 60 *S. Ct.* 900, —, 84 *L. Ed.* 1213, 1218 (1940). The "establishment" and "free exercise" clauses complement each other. See *Abington School Dist. v. Schempp,* 374 U. S. 203, 222, 83 *S. Ct.* 1560, —, 10 *L. Ed.* 2d 844, 858 (1963). Thus, courts may not support the tenets of any one religion and must respect the right of every person to choose his own course with reference to religious observance. To comply fully with these propositions courts should apply neutral principles in deciding controversies arising out of church disputes.

The Supreme Court has pronounced certain basic guidelines which states *must* follow in answering church property questions. They were summarized most recently in *Jones v. Wolf,* — *U. S.* —, 99 *S. Ct.* —, 61 *L. Ed.* 2d 775 (1979). The first is that civil courts may not resolve church property disputes on the basis of religious doctrine and practice. *Id.* at —, 99 *S. Ct.* at —, 61 *L. Ed.* 2d at 784. Accordingly, the Court has rejected the "English approach" of resolving property disputes in hierarchical churches. Under that approach, local church property was impliedly held in trust for the general church so long as the general church adhered to the tenets of faith and practice existing at the time of affiliation by the local church. See *Presbyterian Church v. Hull Church,* 393 *U. S.* 440, 443 n. 2, 89 *S. Ct.* 601, —, 21 *L. Ed.* 2d 658, 662 (1969). If the general church de-

parted from those tenets of faith and practice, the trust failed and ownership vested solely in the local unit. Civil courts would necessarily be called upon to decide what the religious tenets were and whether a meaningful change had occurred. This decision-making would enmesh the courts in questions of religious dogma, a prohibited area. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 *U. S.* 696, 710, 96 *S. Ct.* 2372, —, 49 *L. Ed.* 2d 151, — (1976). Thus, it is impermissible for civil courts to resolve property disputes in this fashion. It follows that, when seeking to decide a particular religious matter involving a hierarchical church, courts must defer to the decision of the church's supreme authority on that matter. *Serbian E. Orthodox Diocese*, 426 *U. S.* at 724-725, 96 *S. Ct.* at —, 49 *L. Ed.* 2d at 171.

The second basic constitutional guideline is that states are free to adopt any approach to adjudicate church property disputes "'so long as it involves *no* consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'" *Jones v. Wolf*, — *U. S.* at —, 99 *S. Ct.* at —, 61 *L. Ed.* 2d at 784 (quoting *Md. & Va. Eldership v. Sharpsburg Church, Inc.*, 396 *U. S.* 367, 368, 90 *S. Ct.* 499, —, 24 *L. Ed.* 2d 582, 584 (1970) (Brennan, J., concurring) (emphasis added)). The Supreme Court has approved one method, the application of "neutral principles of law." *Jones v. Wolf*, — *U. S.* at —, 99 *S. Ct.* at —, 61 *L. Ed.* 2d at 784. This method relies on objective, traditional concepts of trust and property law familiar to lawyers and judges. The analysis used is that generally followed in private law. As applied in *Md. & Va. Eldership*, the neutral principles approach resolved a local church property dispute on the basis of the language employed in the deeds, terms of the local church charters, state statutes governing the holding of church property, and provisions in the constitutions

of the general church and of the Maryland and Virginia Eldership concerning the ownership and control of church property. The neutral principles of law analysis is completely secular in its operation. Though it may involve examination of some religious instrument, such as a church constitution, that examination must be performed "in purely secular terms" without relying "on religious precepts in determining whether the document indicates that the parties have intended to create a trust." *Jones v. Wolf*, — *U. S.* at —, 99 *S. Ct.* at —, 61 *L. Ed.* 2d at 785.

The neutral principles of law approach "free[s] civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Ibid.* It is a method with which courts are familiar, and contains the "peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties." *Ibid.*

Despite these characteristics, the majority has chosen not to apply the neutral principles of law methodology where a "hierarchical" church is involved. It holds that when a hierarchical organization exists, civil courts must defer to the higher ecclesiastical authority in resolving a property dispute between a local parish and the general church. Both the trial court below and the majority rely on *Watson v. Jones*, 80 *U. S.* (13 Wall.) 679, 20 *L. Ed.* 666 (1872), for this proposition. They assert that *Watson v. Jones* established the rule that the existence of a hierarchical church organization conclusively establishes that a local property dispute must be resolved in favor of the religious doctrine or tenet advocated by the central church. *Watson v. Jones* does not stand for that broad proposition, and, if it did, would violate the Establishment Clause of the First Amendment. In *Watson v. Jones*, the dispute arose within a local church when the

central church body, the General Assembly of the Presbyterian Church of the United States, condemned slavery. The majority of the Walnut Street Presbyterian Church of Louisville, the local church, sided with the central body. The dissidents in the congregation did not. The issue presented to the trial court was which set of trustees and elders elected by competing factions of the Walnut Street church should serve the congregation. The matter turned on the power of the General Assembly to prescribe qualifications for local church office and the question presented essentially concerned the extent of a particular church's ecclesiastical authority. In that context the Supreme Court formulated the principle of compulsory deference by courts to decisions of ecclesiastical authorities in hierarchical churches over religious matters which had been committed to them. *Watson v. Jones* did *not* involve the right of a local parish to secede from the central organization, taking its property with it. This is the *precise* point which the majority herein misses.

There have been occasions when the resolution of a doctrinal controversy affected control of property. However, in those situations the crucial subject matter in dispute was of an ecclesiastical nature. If the central body has been authorized to decide the ecclesiastical question, its determination would be final and binding on the civil courts. Thus, in *Serbian E. Orthodox Diocese*, suspension and defrockment of a bishop were religious issues to be decided by ecclesiastical and not civil tribunals. Resolution of the religious dispute incidentally determined control of property because the bishop was the principal officer of the corporation which owned the property. However, the Court noted:

> Thus, this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not

civil tribunals. [426 *U. S.* at 709, 96 *S. Ct.* at —, 49 *L. Ed.* 2d at 163]

In contrast, in *Jones v. Wolf*, the majority of the local parish sought to secede from the general church taking the local property with them. The dissidents who were in the minority sought a judicial declaration of their right to exclusive possession and use of the church property. Thus, the central issue projected was the right of the local church to withdraw its property.[1] By applying neutral principles to resolve the property question, the *Jones v. Wolf* Court recognized that the answer to an underlying but separate ecclesiastical question by a hierarchical body did not foreclose the civil court from resolving the property dispute.

In this case, the core issue concerns control over the property which is in the name of St. Stephen's. The complainants are the Protestant Episcopal Church in the Diocese of New Jersey, its bishop and the Trustees of Church Property of the Diocese. They seek a declaration that all the real and personal property of St. Stehpen's is impressed with a trust in favor of the Diocese of New Jersey.[2] The plaintiffs claim equitable ownership and control over the property. The court has not been requested to resolve a dispute between two factions within the St. Stephen's parish. None of the dissidents in St. Stephen's is a party to this action. None has intervened.

Contrary to the majority's assertion, the dispute before us is *not* "doctrinal in nature," *ante* at — (slip op. at 15),

1. A secondary question involved resolution of the intra-church dispute between the two factions in the local church.

2. The trial court's summary judgment order recited only that control of all property of St. Stephen's be placed in the hands of the Trustees of Church Property of the Diocese and that the Rev. Stanwood E. Graves be evicted from the rectory and enjoined from entering the church or parish house.

even though it arose as a result of controversies over church doctrine and practice. None of the plaintiffs, the Diocese of New Jersey, the Trustees of Church Property of the Diocese of New Jersey, and the Bishop of the Diocese, has sought the ouster of the present wardens and vestrymen of St. Stephen's Church. The plaintiffs do not seek to transfer control of the parish property to a loyal group of parishioners; nor do they seek to maintain an orthodox parish by appointing a new rector. The Diocese is seeking to gain control of the property for itself. Thus, unlike in *Serbian E. Orthodox Church*, upon which the majority relies, the issue before this Court is primarily one of property law: whether the Diocese has equitable ownership and the right to control the property of St. Stephen's Church.[3] The type of primarily religious dispute that led to complete judicial deference in *Serbian E. Orthodox Diocese* and *Watson v. Jones* is not present here.[4]

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3. See note 2 *supra*.

4. The arguments made by counsel on the motion for summary judgment, the exhaustive opinion of the trial court, the Appellate Division opinion, and the briefs of counsel have not addressed the problem in terms of the status of defendants as wardens and vestrymen. This proposition has surfaced for the first time in the majority opinion. The parties have not been given the opportunity to develop a record or argue that issue. In *Nieder v. Royal Indemnity Ins. Co.*, 62 *N. J.* 229, 234 (1973), we wrote:

> It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available "unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." *Reynolds Offset Co., Inc. v. Summer*, 58 *N. J. Super.* 542, 548 (App. Div. 1959), certif. den. 31 *N. J.* 554 (1960).

I do note here, for example, that in connection with this new issue the defendant wardens and vestrymen were duly elected and acting as such when the local parish corporation held its meeting

Even if the question is projected as the majority suggests, namely that when a hierarchical institution exists civil courts must defer to ecclesiastical authority to resolve property disputes, the *Watson v. Jones* rule must be applied consistently with the principles contained in *Jones v. Wolf*. In *Jones v. Wolf*, both the majority and dissent, unlike the majority in this case, recognized that the hierarchical form of the church's organization did not *per se* resolve an intra-church dispute over control of church property.[5] Since a hierarchy could exist as to ecclesiastical

4. (Cont'd.)

to disaffiliate, that no specific canon has been brought to the court's attention empowering the central church to remove wardens and vestrymen from their offices and declare them vacant. Even if such a power exists, there is no showing that it has been exercised. The majority quotes from an affidavit of the Venerable Canon Russell Abbott Smith to the effect that the wardens and vestrymen are not entitled to hold office. This conclusory statement conflicts with the affidavit of the Senior Warden Donald S. Moore that he continues to have that status and has "never been notified by plaintiffs that they no longer consider me to be one of the wardens of the parish." See *American Primitive Society v. Pilling*, 24 *N. J. L.* 653 (Sup. Ct. 1855), holding that duly elected trustees of the local church corporation did not lose their offices when the congregation voted to disassociate from the central church, that the local church corporation continued to exist, and that the trustees remained in their offices until ousted. Moreover, the question would remain whether the property placed in the name of the local corporate entity for the membership belongs to the membership when it disaffiliates from the central institution.

5. A similar recognition may be found in New Jersey opinions which dealt with hierarchical churches. In *Vargo v. Vajo*, 76 *N. J. Eq.* 161 (Ch. 1909), secession was sanctioned where the hierarchical polity applied to ecclesiastical matters but the jurisdiction as disclosed in the church constitution did not "include the management and control of the church property. . . ." *Id.* at 170. *St. John's Greek Catholic Hungarian Russian Orthodox Church v. Fedak*, 96 *N. J. Super.* 556 (App. Div. 1967), certif. den. 50 *N. J.*

matters and not as to others, the first question to be addressed according to the *Jones v. Wolf* dissent is, "where within the religious association the rules of polity, accepted by its members before the schism, had placed ultimate authority over the use of the church property." — *U. S.* at —, 99 *S. Ct.* at —, 61 *L. Ed.* 2d at 794 (Powell, J., dissenting). The object of that inquiry is to determine whether the local church has unreviewable authority to withdraw with its property from the general church. The assumption that a local church has necessarily given up the power to control its property by affiliating with a hierarchical church is unsound. It assumes the existence of a provision to that effect in the agreement that in fact may not exist. Moreover, by not ascertaining who the parties had agreed should decide the question of property control in the event of a schism, the court might effectively contravene the First Amendment. The court might then be compelling, without consent of the owner, the appropriation of its property for use by another for religious purposes. See "Church Property Disputes," 31 *Mercer L.* Rev. at 577.

The majority in *Jones v. Wolf* points out that to ascertain who has the authority to resolve the church property dispute requires an examination of the polity and administration of the church. In some cases this might not be difficult. If the locus of control is ambiguous, however, a

5. (Cont'd.)

406 (1967), held that the parish had never surrendered control over local temporal affairs including the authority to secede.

The comment "Church Property Disputes: The Trend and the Alternative," 31 *Mercer L. Rev.* 559, 575 (1980) ("Church Property Disputes") points out that membership in a hierarchical organization does not necessarily mean that the local church cannot be congregational as far as control of local church property is concerned.

careful scrutiny of the constitutions, canons, other documents, past practices and customs, would be necessary. Such searching would constitute an "'impermissible inquiry into church polity.'" *Jones v. Wolf*, — *U. S.* at —, 99 *S. Ct.* at —, 61 *L. Ed.* 2d at 786 (quoting *Serbian E. Orthodox Diocese*, 426 *U. S.* at 723, 96 *S. Ct.* at —, 49 *L. Ed.* 2d at 170). As Justice Brennan wrote in *Md. & Va. Eldership*, 396 *U. S.* at 369-370, 90 *S. Ct.* at —, 24 *L. Ed.* 2d at 584 (concurring opinion) (footnote omitted):

> To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy. In other words, the use of the Watson approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious polity.

Reliance on *Watson v. Jones* in this case would involve just such an impermissibly extensive inquiry into religious polity.

The parties have not identified any constitutional provisions or canons that address the right of a local parish to withdraw, what happens to its property when that occurs, or who is authorized to resolve a property dispute when a local body secedes. In the absence of clear expressions on these issues a searching inquiry would have to be made

into the historical practices and rules of the Protestant Episcopal Church in the United States of America and the Protestant Episcopal Church in the Diocese of New Jersey. (In fact, there is sharp disagreement among experts on canon law and church history. One expert testified in the companion *St. Mark's* case, *Diocese of Newark v. Burns*, — *N. J.* — (1980), that parishes have the ultimate control and may withdraw their property, while another testified that they may not secede and take their property.) An inquiry of this type and its resolution by a civil court would constitute an " 'establishment of religion' with a vengeance. . . ." *Md. & Va. Eldership v. Sharpsburg Church, Inc.*, 254 *Md.* 162, —, 254 *A.* 2d 162, 170 (Ct. App. 1969), dismissed for want of substantial federal question, 396 *U. S.* 367, 90 *S. Ct.* 499, 24 *L. Ed.* 2d 582 (1970).

The majority refers to only one canon in support of its position, Title I, Canon 6, Section 3, which provides that no body authorized by civil or canon law to hold real property for any parish shall encumber or alienate the same without the written consent of the Bishop and Standing Committee of the Diocese.[6] Though indicating a measure of control over the local unit while it is part of the hierarchy, that canon, like other provisions governing a member local unit, would not be effective upon disaffiliation. No reverter or other provision transfers the property to the general church when no longer used in accordance with the doctrine, discipline or worship of the Protestant Episcopal Church in the United States of America. The measure of control embodied in Title I, Canon 6, Section 3, does *not* create an express or an implied trust in favor of the general church.

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6. To a similar effect, see *N. J. S. A.* 16:12-4 which, like Title I, Canon 6, Section 3, indicates control over property only while the local unit is part of the general hierarchy.

Likewise, the constitution and canons of the national church and the Diocese disclose nothing which "in purely secular terms" provided that the St. Stephen's property was being held in trust, expressly or impliedly. If anything, the diocesan canons indicate a contrary intent.

Canon 17, Section 3, provides:

> The title to all real estate and endowment funds of a parish receiving financial assistance from the Diocese for the support of the rector in accordance with this canon, unless otherwise directed by the Trustees of the Diocesan Foundation, shall be vested in the Trustees of Church Property of the Diocese of New Jersey, to be held by them in trust until such time as the parish may again be self-supporting.

Canon 21, Section 8, reads:

> The title to real estate, given to or purchased by the Mission for Church purposes, unless otherwise ordered by the Board of Missions, shall be vested in the Trustees of Church Property of the Diocese of New Jersey, to be held by them until such time as the said property may be sold pursuant to Section 6 of Canon 9, or until such time as the Mission shall become duly incorporated as a Parish and admitted into union with the Convention, when the title may be transferred to the Church corporation if it shall so elect. Mission Advancement, Inc. may be authorized by the Trustees of the Diocesan Foundation to acquire, mortgage, sell, lease, or otherwise deal with property for mission purposes.

Canon 37, Section 4, Plan B(2)-Paragraph 4(a), referring to a Parochial Chapel, states:

> The title to all real property shall be vested in the Trustees of Church Property of the Diocese of New Jersey.

These three canons exhibit an intent that under some limited circumstances title to property shall be in the central church. They also demonstrate that when property was to be vested in the central church, provisions to that effect were made in clear and unambiguous language. Indeed, absent financial indebtedness to the Diocese, under Canon 17, Section 3, title to all parish real estate is in the local unit. In light of the canons, the power to control the financial and property affairs of the parishes belongs virtually exclusively to the local body.

The Supreme Court in *Jones v. Wolf* suggested:

> Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members. [— *U. S.* at —, 99 *S. Ct.* at —, 61 *L. Ed.* 2d at 785]

After this litigation arose and *Jones v. Wolf* was decided, the national church modified Title I, Canon 6, Section 4, to provide that all property of the local church is held in trust for the general church. The church has thereby made it clear that the withdrawing congregation is not entitled to the local church property. This clarity is found by a secular approach and safeguards civil courts from fostering the interests of one religious group over another by engaging in a dialogue of religious dogma or practice in violation of First Amendment principles.

Jones v. Wolf recommended that property disputes be settled by neutral principles of law. Completely secular in operation, the method relies on objective, established

concepts of trust and property law. The local parishioners of St. Stephen's purchased the land and buildings with their funds. Deeds to the properties have always been in St. Stephen's. St. Stephen's has maintained the property through the years. No trust in favor of the general church can be found when the neutral principles of law are applied to the facts. No instrument expresses that a trust, express or implied, has been created in favor of the general church. Nothing can be found in St. Stephen's corporate charter and nothing exists in the constitution of the general church creating a trust, express or implied, in favor of the general church. Following the precise instructions in *Jones v. Wolf*, I am satisfied that no trust has been created in the local church property.

This result is fair and just. St. Stephen's was organized as a separate entity by people who believed in the Protestant Episcopal Church. They and their successors advanced the funds to purchase and maintain the land and buildings. St. Stephen's voluntarily joined the Protestant Episcopal Church in the United States of America. It has decided to withdraw from that organization. In the absence of having dedicated its property to that central body or having agreed that someone else would decide in the event of a schism what would happen to its property, it should be permitted to retain that property. Though there had been some disagreement among the congregants (the vote was 44 to 8 to withdraw), the dissenters are not parties to or intervenors in this action and apparently have acceded to the will of the majority. At the time of the motion hearings before the trial court, there were approximately 200 members in the parish, all of whom supported the defendants.

I would reverse and remand.

Justices Pashman and Handler join in this opinion.

APPENDIX C

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-2490-77

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF NEW JERSEY, THE TRUSTEES OF CHURCH PROPERTY OF THE DIOCESE OF NEW JERSEY, and THE RIGHT REVEREND ALBERT W. VAN DUZER,

Plaintiffs-Respondents,

v.

THE REVEREND STANWOOD E. GRAVES, DONALD S. MOORE, CAROLYN B. LORINCZ, GEORGE ROUSSEAU, ALPHEUS OAKES, WILLIAM E. VACTOR, SR., MICHAEL BROWN, JOANNA CHILD, JOHN HOOK, GORDON GRISWOLD, HOWARD OAKLEY, WALTER K. SMITH, CHARLES CURTIS, ARNOLD GARDNER, and THE RECTOR WARDENS AND VESTRYMEN OF SAINT STEPHEN'S PARISH OF PLAINFIELD, NEW JERSEY,

Defendants-Appellants.

Argued April 3, 1979—Decided April 27, 1979

Before Judges Matthews, Kole and Milmed.

On Appeal from the Superior Court, Chancery Division, Union County, whose opinion is reported at 161 *N. J. Super.* 230 (1978).

Mr. Daniel J. Matyola (Messrs. Wharton, Stewart & Davis, attorneys), and Mr. William B. Ball of the Pennsylvania Bar, admitted *pro hac vice* (Messrs. Ball & Skelly, attorneys) argued the cause for appellants (Mr. Philip J. Murren, on the brief).

Mr. John Wood Goldsack argued the cause for respondents (Messrs. King, King and Goldsack, attorneys).

PER CURIAM

We affirm the judgment of the chancery division for the reasons expressed by Judge Ackerman in his opinion which is reported in 161 *N. J. Super.* 230.

When reduced to its simplest terms, the argument of defendants would have us base our ultimate determination of this case on a finding that they were justified in "leaving" the church as represented by plaintiffs. This we obviously cannot do as is made clear in *Watson v. Jones,* 80 *U. S.* (13 Wall.) 679 (1872), and the numerous cases which have followed it, the most important of which are cited in Judge Ackerman's opinion.

Affirmed.

APPENDIX D

Resolved, the House of *Deputies* concurring, That Title I, Canon 6, of the Canons of the Episcopal Church, be amended to add a Section 4 as follows:

> *Section 4.* All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to this Church and its Constitution and Canons.

APPENDIX E

HOUSE OF BISHOPS MESSAGE ADOPTION

Ref. No. D-24

(Blue Book, page __)

MESSAGE No. 76

5th DAY OF SESSION

September 13, 1979
(Date)

(Legislative CTEE. Ref. #5)

THE HOUSE OF BISHOPS informs the HOUSE OF DEPUTIES that it *has adopted* the following Resolution: D-24 with amendments. Full text attached

Resolved, the House of Deputies concurring, That

Whereas, The Episcopal Church is a hierarchical church, in which local parish churches are a part of, and are subject to, the Constitution and Canons of the Episcopal Church and of the diocese in which they are geographically present; and

Whereas, The Episcopal Church recognizes that local parishes have broad autonomy in the use of their property, so long as they act within the confines of the Constitution and Canons of the Episcopal Church and of the diocese in which they are geographically present; therefore be it

Resolved, the Houe of *Deputies* concurring, That Title I, Canon 6, of the Canons of the Episcopal Church, be amended to add a Section 4 as follows:

Section 4. All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof

in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to this Church and its Constitution and Canons.

Resolved, The House of *Deputies* concurring, that Title I, Canon 6, be amended to add a Section 5, as follows:

Section 5. The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action but no such action shall be necessary for the existence and validity of the trust.

Resolved, The House of Deputies concurring, that the amendment to Title I, Canon 6 become effective upon the enactment by the General Convention.

MEMORIALS AND RESOLUTIONS

Legislative No. D-24 Initiating House Bishops #5
Origin—Canon Walter Dennis, Diocese of New York
Subject—Amend Title I, Canon 6 to add a new Section 4

Whereas, The Episcopal Church is a hierarchical church, in which local parish churches are a part of, and are subject to, the constitution and canons of the Episcopal Church and of the diocese in which they are geographically present; and

Whereas, It would violate the constitution and canons of the Episcopal Church if a majority of the membership of a local parish could, by majority vote, alienate the property of such local parish from the Episcopal Church; and

Whereas, The Supreme Court of the United States, in the case of Jones v. Wolf, — U. S. —, 99 S. Ct. 3020 (1979) has suggested that such alienation might be legally possible, in the absence of an explicit recitation in the constitution that an express trust exists in favor of the general church, concerning the property of local parishes; and

Whereas, The Episcopal Church recognizes that local parishes have broad autonomy in the use of their property, so long as they act within the confines of the constitution and canons of the Episcopal Church and of the diocese in which they are geographically present; therefore be it

Resolved, the House of _____ concurring, That Title I, canon 6, of the canons of the Episcopal Church, be amended to add a Section 4 as follows:

> *Section 4.* All real and personal property held by any Parish, Mission, Congregation or Institution, is held subject to an express trust in favor of the Episcopal Church and of the Diocese in which such Parish, Mission, Congregation, or Institution is geographically present. The existence of this express trust, however, shall in no way extend the authority of the Episcopal Church or of the Diocese over such Parish, Mission, Congregation, or Institution, beyond the authority granted to the Episcopal Church or Diocese by the constitution and canons of the Episcopal Church or of the Diocese, so long as the Parish, Mission, Congregation, or Institution remains a part of, and subject to, the constitution and canons of the Episcopal Church and of the Diocese. If, however, all or a part of the membership of such Parish, Mission, Congregation, or Institution shall disaffiliate themselves from the Episcopal Church or of the Diocese, then, upon certification of such fact by the Bishop and Standing Committee of the Diocese in which the Parish, Mis-

sion, Congregation, or Institution shall, by operation of the express trust in favor of the Episcopal Church and the Diocese, revert to the Diocese in which the Parish, Mission, Congregation, or Institution is geographically present or, alternatively, shall remain in or revert to some body certified by the Bishop and Standing Committee of the Diocese as the proper representative of the members of the Parish, Mission, Congregation, or Institution remaining loyal to the constitution and canons of the Episcopal Church and of the Diocese.